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## LEGISLATIVE NOTES AND REVIEWS

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**Constitutional Revision in Pennsylvania.** On September 20 the people of Pennsylvania voted on the question of calling a constitutional convention. As this note was written, the indications were that the result would be in favor of this action, but the unexpected happened, and the vote was against the convention.

In anticipation of the proposed convention there had been prepared what no other constitutional convention has ever had at its opening session—the text of a new constitution containing, when compared with the present constitution, one hundred and thirty changes in substance, a complete rearrangement of articles and sections, and numerous stylistic changes made necessary by a strict adherence throughout to the use of the same words and phrases to describe the same things and ideas, and in connection with each section elaborate notes giving the text of the corresponding section of the present constitution, showing the exact nature of each change suggested, and the reason therefor.

This proposed constitution is the result of over a year's work on the part of a state commission created under an act passed by the legislature of 1919, and entitled the "Commission on Constitutional Amendment and Revision."

The idea of a commission charged with the duty of preparing the way for a constitutional convention by drafting suggested amendments or a suggested revision of the entire constitution, is merely applying to the process of constitution-making a device which has worked successfully in the drafting of other difficult pieces of legislation. For years we have had state commissions to prepare drafts of tax laws, workmen's compensation laws, revisions of various codes or parts of codes, etc., for submission to the state legislature. Such commissions are now a recognized part of the process of drafting legislation. Nevertheless, Pennsylvania is the first state to attempt to add to a convention, which is the recognized legislative body for constitution-making purposes, the machinery of a prior appointed commission charged with the

duty of drafting amendments or a complete constitution for the consideration of the convention.

The idea of such a commission was first publicly suggested by the Progressive, or, as it was called in Pennsylvania, the Washington party, in 1913. The legislative committee of that party caused to be introduced into the state legislature a series of bills providing for a constitutional convention, and the prior creation of a commission charged with the duty of predigesting the questions which would necessarily be discussed by the convention and submitting drafts of suggested constitutional changes. These acts passed the Pennsylvania house of representatives but failed of passage in the senate.

The movement for a new constitution made no headway in the State until the election of the present Governor, William C. Sproul, in 1918. The constantly increasing desire to tinker with the state constitution by amendment led the new governor to believe that the question of systematic revision of the constitution through the instrumentality of a constitutional convention should be seriously considered. He therefore advocated the creation of a commission to study the question of constitutional amendment and revision, and make report to the legislature setting forth the constitutional changes, if any, which they regarded as advisable, and whether in their opinion these changes should be embodied in a series of amendments or in a revised constitution. A revised constitution would of course involve the calling of a constitutional convention.

It will be perceived that the governor's object in advocating the creation of the commission was twofold: He believed that if the constitution was to be revised, the convention charged with that duty, no matter how distinguished the delegates, to do good work, must have the aid of the results of a prior systematic study of the present constitution in the light of modern thought and conditions. He also believed that the question whether there should be a revision of the constitution was so important, that before it was finally decided by the people, they should have the advice of the best commission which it was in his power to create.

The act creating the commission was passed in June, 1918. When the names of the members appointed by the governor were announced it was found that he had created a commission composed of twenty-three men and two women, leaders in their respective fields of activity. The bar was represented by the attorney-general, William I. Schaffer, who was designated as the chairman of the commission, and several

of the most distinguished lawyers in the state. Though the majority were Republicans, the leaders of the Democratic party were given places on the commission. There was a representative of organized labor, a college president, the provost of the University of Pennsylvania, representatives of the agricultural and of the business interests of the state, besides Gifford Pinchot, the conservationist and progressive leader, and T. De Witt Cuyler, a leading representative of large financial interests. None criticised the ability of the personnel, taken as a whole, but there was a very general feeling that the commission was unduly weighted on the conservative side, that the report would therefore probably be against any revision of the constitution, and that in any event men of large affairs, and lawyers whose fees ran up into the tens of thousands annually, could not be expected to devote the time necessary to study so important and intricate a subject as the revision of the state constitution.

The result has shown both these criticisms to be unfounded. The commission under the remarkably skillful guidance of its chairman took itself seriously from the start. Its meetings were held in the senate chamber at Harrisburg and were always open to the public. The debates, held with all the formality of a dignified legislative body, were stenographically reported, and are now printed in the "Proceedings of the Commission," the high average ability of the members of the commission making these proceedings the most interesting series of debates on modern state constitutional problems at present in existence.

The commission in the winter of 1920 published and distributed a preliminary draft of the changes in the constitution which appealed to them as worthy of consideration, and subsequently held public hearings which lasted almost a month. The suggestions made at the public hearings were all embodied in definite amendments, each of which was separately considered by the full commission.

When all substantive changes in the present constitution were acted upon by the commission, a committee on style spent several months in re-drafting the entire constitution of the state, except the bill of rights, in which no changes were made, in accordance with uniform rules of style, the main object of the work of the committee being to reduce to a minimum the possibility of controversy over the meaning intended.

When the commission began its labors the great majority of the members believed that the present constitution of the state, with pos-

sibly a few amendments, would be found sufficient to meet the new conditions which have arisen in the last fifty years. But when the work was done, they all realized that the reasons which impelled them to suggest a complete revision of the state constitution likewise impelled them to urge calling a constitutional convention.

It is not too much to say that the manner in which the commission discharged its duty produced a most favorable impression on the people of the state. The time devoted, the eminence, and on the whole, the decidedly conservative character of its personnel, have been sufficient to convince the average citizen that their conclusion that the state needs a new constitution is based on solid considerations, and not on a mere desire for innovation. Their report also convinced the governor that the state should have a new constitution, and Pennsylvania has not within the memory of the present generation had a governor in whose judgment there is such widespread confidence. His administration has been eminently successful. He has gathered into his cabinet representatives of all elements of his party, and the general character of the executive personnel of the state departments is high. In Pennsylvania what Sproul wants has usually been found to be right.

If the convention had been called it was to be constituted as provided in the act of assembly adopted by the legislature last winter. This act contains a feature which is new to American state constitution-making. While ninety-six delegates would be elected from congressional districts, twenty-five delegates-at-large would be appointed by the governor, and the governor announced that so far as they were willing to serve he expected to appoint the members of the commission. There was considerable discussion over this feature of the bill. Against the appointment of the delegates-at-large it was urged that a constitutional convention was a convention of the representatives of the people, and that to have it contain members appointed by the executive would constitute a dangerous precedent. Those who supported the provision pointed out that delegates-at-large could be nominated in one of two ways only; by party convention or by direct primary; that in either case a small group of leaders in each party would control the nominations because the number of delegates to be elected and the size of the electorate made it impossible for individual voters or groups of voters to have an effective voice. It was further pointed out that the electorate would have a much better chance to pass intelligently on the question of whether they desired a convention at all if they knew who the delegates-at-large were going to be, and that finally a convention only drafted a constitution for submission to the people who could adopt or reject it.

Without entering further into the merits of this controversy it is clear that the provision insures the presence in the convention of a group of eminent delegates who have devoted time and study to state constitutional questions. It also makes more than probable what otherwise might be very doubtful, namely, that the convention will on assembling take up at once the consideration, section by section, of the constitution proposed by the commission, because that constitution will have been reported by what will have become a committee composed of twenty-five eminent members of the convention. All students of recent constitutional conventions will hope that the report of the commission and the presence in the convention of its members will make it unnecessary for the convention to divide itself into small committees on the legislature, the judiciary, public utilities, municipalities, etc., and that thus the convention will be able to get to work at once on the more important problems that confront it.

If the convention takes up, section by section, the report of the commission, this will not mean that the convention will adopt all or even the greater part of the changes recommended by the commission, or refuse to make a change not recommended. Although it is true that there was extraordinary unanimity on the part of the members of the commission in respect to the changes suggested in their proposed constitution, it is also true that there is not a member of the commission who agrees with every change proposed. Nevertheless, the proposed constitution forms a better basis for discussion by the convention of the constitutional problems in which the people of the state are interested than the existing constitution of the state, because it contains definite suggestions for the solution of a majority of these problems. One may not agree with the great majority of the solutions of modern state constitutional questions suggested, but the great advantage of having the convention direct its attention to the report of the commission, both in the saving of time and in the increased clarity of the issues presented, is evident.

The critical moment in the convention will come when the vote is taken on the motion to go into the committee on the whole to take under consideration the report of the commission section by section. If that vote is adopted, the constitution ultimately drafted by the convention may be a very different document from that suggested by the commission, but Pennsylvania will have set a precedent in state constitution-making which, in the writer's opinion, will do much to preserve respect for the constitutional convention as the method of revising

our state constitutional law, and this because the work of the commission will have made it possible for the convention to do, what has not been done by any state constitutional convention for many decades—draft a short, concise and clear state constitution, which will deal as far as it is advisable for a constitution to deal, with the modern complicated problems of state and local government.

A word as to the character of the constitution recommended by the commission.

The members taken as a whole were not interested in experiments or changes in what may be termed the machinery of government. There is practically little or no sentiment in the state for the initiative, or even for that most conservative of change-blocking devices the referendum. There is no provision for either in the proposed constitution. On the other hand, the members of the commission were interested in removing any obstacle in the present constitution to the development of the material prosperity of the state or the adequate prosecution of public works. Provisions were inserted enabling the state by popular vote to borrow one hundred and fifty million dollars for the construction of roads and twenty-five millions for the purchase and conservation of forest lands. Again, under the present constitution it is impossible in taking land for public improvement to assess the benefits on any land, no matter how much enhanced in value, which does not abut on the improvement. Neither is it possible in making a public improvement to take more land than it is proposed to retain, and resell the excess subject to restrictions protective of the public purpose for which the land is taken. By unanimous vote provisions doing away with these restrictions were adopted. Though the problems of state taxation remain unsolved, and the commission refused to sanction progressive taxation, it has incorporated provisions which if adopted will require the state government to operate under an executive budget system.

Pennsylvania gives more annually to charitable institutions not under the control of the state or municipal governments than is given by all the other states of the United States taken together. Whether such gifts should be indefinitely continued was much debated. A minority of the commission desired to insert a provision to the effect that after 1926 no money should be appropriated for the support of charitable, benevolent or educational institutions not owned and controlled by the state or a municipal government. The majority, however, believed that the system should be continued with radical modifications. The provisions suggested, while doing away with

the existing system of stating in the appropriation act a definite sum to be paid to a designated institution, permits the classification of institutions not under the control of the state, and an appropriation of a lump sum to any one class, the appropriation to be divided among the members of the class in accordance with a plan uniform in its operation as among the members of the class. The plan of distribution among the members of a class is to be set forth in an appropriation act or by an agency created by law, as the department of public welfare.

I have here only given examples of the general character of the substantive changes recommended by the commission. The stylistic changes in the proposed constitution, taken as a whole, form an important part of their work. The constitution of Pennsylvania, drafted in the last part of the eighteenth century, was comparatively short, and from the stylistic point of view well written. Since then the successive additions, while in many cases embodying vitally important and valuable substantive changes, have shown a marked deterioration in style. Long involved sentences, the use of the same words or phrases in different senses, the tendency to deal with new subjects, as local government, in several different parts of the constitution, all unite to increase its length and multiply these problems of construction which can only be determined by extensive and time-consuming litigation.

The commission determined to follow a few simple rules of style: that the same word should not be employed in two different senses; that the same thing should not be designated by one word in one section and by another word in another section; that the same idea should always be expressed by the same combination of words. To adopt these rules in drafting new sections, or sections in which substantive changes were proposed, and fail to revise the language of the remaining sections of the constitution in which as stated there is an entire lack of uniformity in the language used, would do little to decrease existing confusions and uncertainties. To make the use of language uniform throughout the constitution, the commission were therefore obliged to make stylistic changes in sections in which no substantive change is recommended. The result of their painstaking stylistic revision is that the substantive provisions of the proposed constitution are expressed in clear and concise English. Whatever substantive provisions the convention may ultimately embody in the constitution which they will recommend to the people, if they adhere to the "style" of the constitution proposed by the commission there will hereafter be comparatively little litigation to determine what the constitution means. When

we consider the hundreds of thousands of dollars spent on litigation in the United States annually to determine the meaning of constitutional provisions, this in itself, whatever the nature of the substantive provisions of Pennsylvania's new constitution, will be a great gain.

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**The Louisiana Constitutional Convention.** In 1913 a constitution was adopted for the state of Louisiana, which, although superseding the constitution of 1898, nevertheless declared the provisions of that constitution to be in effect unless specifically repealed by or inconsistent with the new instrument.<sup>1</sup> When the supreme court of Louisiana nullified many of the provisions of the constitution of 1913, on the ground that the convention had exceeded its limited powers, there were thus, in effect, two constitutions for the state of Louisiana. Certain provisions of the constitution of 1913 remained valid, while in other matters the constitution of 1898 was restored as the fundamental law.

The confusion and uncertainty thus caused led to immediate agitation for a new constitution, and the legislature of 1915 passed an act calling a convention, which call was, however, rejected on submission to the people. Succeeding legislatures thereupon sought to cure the defects in the fundamental law through amendments, and a total of 31 were submitted and ratified. These seemed merely to add to the confusion, however, the defects being especially serious in the judicial system—some of the courts were behind their docket, some unable to function properly, and some practically idle.

The demand for a new constitution was therefore continued, being pressed especially by the Bar Association and by business and commercial organizations. Governor Parker and his opponent for the nomination in 1919 both made the calling of an unlimited convention one of their principal platform demands, and a call for such a convention, submitted by the legislature of 1920, was approved by a large majority at the polls.

The convention thus called assembled at Baton Rouge March 1, 1921, and adjourned June 18, having been in session 110 days. It was composed of 146 delegates, among them three women. Altho not distinguished by any dominant leadership and not producing any outstanding figure, it would probably average high in personnel, including among its members, for example, two former governors—

<sup>1</sup> Constitution of Louisiana, 1913, Art. 326, Cl. 6, in Kettleborough, *State Constitutions*, 587.